
IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

DIANE KILLIAN ALLAN,

Plaintiff,

v.

DANE HANSON, *et al.*,

Defendants.

**MEMORANDUM DECISION AND
ORDER AFFIRMING IN PART AND
OVERRULING IN PART
MAGISTRATE JUDGE’S REPORT
AND RECOMMENDATION**

Case No. 1:22-CV-117-DAK-CMR

Judge Dale A. Kimball

Magistrate Judge Cecilia M. Romero

This case was assigned to United States District Court Judge Dale A. Kimball, who then referred the case to United States Magistrate Judge Cecilia M. Romero under 28 U.S.C. § 636(b)(1)(B). On July 26, 2021, Magistrate Judge Romero issued a Report and Recommendation [ECF No. 64], recommending that Plaintiff’s Motion for Summary Judgment [ECF No. 57] be denied, Defendants David Cole, Troy Rawlings, John Carl Ynchausti, Davis County Attorney’s Office, and the Davis County Justice Court’s (“Davis County Defendants”) Motion to Dismiss [ECF No. 44] be granted in part and denied in part, and Defendants Dane Hanson, Eric Johnsen, Wayne Hansen, and Farmington City Corporation’s (“Farmington City Defendants”) Motion to Dismiss [ECF No. 37] be granted in part and denied in part.

The Report and Recommendation notified the parties that any objection to the Report and Recommendation must be filed within fourteen days of receiving it. The Davis County Defendants filed an Objection to Magistrate’s Report and Recommendation. The other parties did not file objections.

A Magistrate Judge's Report and Recommendation is subject to *de novo* review by this court. *See* 28 U.S.C. § 636(b)(1)(B); *see also* Fed. R. Civ. P. 72(b). The court has reviewed the Report and Recommendation and the record *de novo* along with the parties' objections and related briefing.

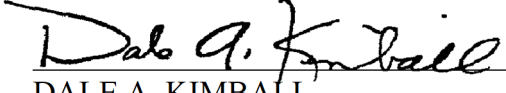
The Davis County Defendants object to the Report and Recommendation's recommendation that the claims against Judge Ynchausti, Prosecutor Cole, Davis County Attorney Rawlings, Davis County Attorney's Office, and Davis County Justice Court be dismissed without prejudice instead of with prejudice. As Magistrate Judge Romero found, based on the facts alleged in Plaintiff's Complaint, Judge Ynchausti is entitled to absolute judicial immunity, and Prosecutor Cole and County Attorney Rawlings are entitled to absolute prosecutorial immunity. The parties do not dispute the facts, Plaintiff has not sought an opportunity to amend her Complaint to allege anything that would take the claims against these Defendants out of the scope of absolute immunity. Therefore, the court agrees that dismissal of the claims against Judge Ynchausti, Prosecutor Cole, and County Attorney Rawlings should be, and are, dismissed with prejudice.

In addition, as Magistrate Judge Romero found, Davis County Attorney's Office and Davis County Justice Court are governmental subdivisions that do not qualify as separate suable entities, only the counties of the State of Utah are recognized as legal subdivisions of the State. Plaintiff could not subject these Defendants to suit by amending her petition. Therefore, the court agrees with Defendants that the claims against Davis County Attorney's Office and Davis County Justice Court should be, and are, dismissed with prejudice.

The court's determination on these issues reverses only the Magistrate Judge's determination of whether the claims should be dismissed with or without prejudice. The court affirms and adopts Magistrate Judge Romero's July 26, 2023 Report and Recommendation [ECF No. 64] in all other respects.

DATED this 15th day of August, 2023.

BY THE COURT:


DALE A. KIMBALL
United States District Judge